STATE OF VERMONT
PUBLIC SERVICE BOARD

Joint Petition of Verizon New England Inc., d/b/a Verizon Vermont, Certain Affiliates Thereof and FairPoint Communications, Inc. for approval of asset transfer, acquisition of control by merger and associated transactions	)))))	Docket No. 7270

PREFILED REBUTTAL TESTIMONY OF MICHAEL D. PELCOVITS

ON BEHALF OF

NEW ENGLAND CABLE & TELECOMMUNICATIONS ASSOCIATION, INC. AND COMCAST PHONE OF VERMONT, LLC

August 10, 2007

Summary: Dr. Pelcovits' rebuttal testimony responds to the Joint Petitioners' critique of his direct testimony and addresses in this context information provided by new Joint Petitioner witnesses who had not submitted direct testimony. Specifically, Dr. Pelcovits responds to and defends merger conditions needed to avoid or mitigate (1) FairPoint's attempt to evade Verizon's existing Section 251 obligations that would remain in place if the proposed transaction does not occur; and (2) FairPoint's proposal to extend existing interconnection agreements (including those now continuing on a month to month basis) for 12 months from closing, rather 3 years from closing. Dr. Pelcovits further rebuts FairPoint's position on the pre-cutover, cutover and post cutover processes and recommends, together with Board oversight, (1) independent third party testing of the readiness of FairPoint's new systems before they are permitted to cutover; (2) steps which must be taken before and during cutover to assure that wholesale customers are not significantly harmed by this proposed transaction; and (3) post cutover contingency planning and remedies for competitors in the event that the cutover damages competitors. Dr. Pelcovits also addresses new information about the proposed structure of FairPoint's wholesale operations and explains why they should not be combined with retail mid and large customer operations. Finally, Dr. Pelcovits addresses other specific portions of the Joint Petitioners' rebuttal testimony that disputed recommendations he made in his direct testimony regarding interconnection procedures.

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I. INTRODUCTION AND SUMMARY

Q. Please state your name, occupation, and business address.

A. My name is Michael D. Pelcovits. I am a principal with the economic consulting firm of Microeconomic Consulting and Research Associates (MiCRA). My business address is 1155 Connecticut Avenue, N.W., Washington, D.C. 20036.

Q. Did you file direct testimony in this case?

A. Yes. I filed direct testimony on behalf of NECTA/CPVT on May 24, 2007. My direct testimony suggested a number of conditions that the Public Service Board should place on any order permitting the proposed acquisition by FairPoint of Verizon's properties in the State of Vermont.

Q. What is the purpose of your rebuttal testimony?

A. I am responding to positions taken by FairPoint and Verizon in their rebuttal testimony that relate to the merger conditions that I recommended. I also address the testimony of new FairPoint witnesses. My rebuttal testimony therefore takes into account new information that the Joint Petitioners included in their rebuttal testimony, as well as new witnesses, and responds to data requests directed at their rebuttal testimony.

Q. What topics does your rebuttal testimony address?

A. My testimony focuses primarily on three issues of great concern to NECTA/CPVT. First, I respond to the testimonies and statements made by FairPoint concerning the interconnection issues which I raised in my direct testimony. Second, I discuss FairPoint's response to issues raised in my direct testimony related to the cutover of systems from Verizon to FairPoint and the need for safeguards against retail and wholesale customers experiencing significant disruptions in service in wholesale operations if the cutover process is not handled properly. Third, I respond to FairPoint's claimed capability and willingness to operate wholesale services that will allow smooth interactions with its competitors, based on new information provided in its rebuttal testimony. In the final section of my testimony I reply to FairPoint's position on specific recommendations made in my direct testimony and take into account new information provided in FairPoint's rebuttal testimony and responses to rebuttal information requests. I have provided to the Board a revised exhibit containing the merger conditions that I recommend in the event that the Board decides to approve the proposed transaction.[1] The principal revision is a recommendation that the Board require independent third party testing of FairPoint's new systems and related safeguards to reduce the risk of substantial harm to the public and to competing carriers arising out of FairPoint's current

[1] Exhibit NECTA/CPVT-MDP-1R

cutover planning process. I also have recommended that FairPoint be required to separate its wholesale services organization from its retail services organization.

II. CONTINUED AVAILABILTY OF COST-BASED INTERCONNECTION REMAINS A MAJOR CONCERN AND BOARD CONDITIONS ARE REQUIRED TO ASSURE THAT FAIRPOINT DOES NOT EVADE VERIZON'S EXISTING OBLIGATIONS UNDER SECTION 251 OF THE TELECOMMUNICATIONS ACT

Q. In its rebuttal testimony, has FairPoint adequately addressed your concerns regarding the continued availability of cost-based interconnection arrangements after the closing of the proposed transaction?

A. No. A competitive local exchange carrier must offer ubiquitous coverage to its customers, i.e. the ability to call or be called by any other telephone customer. Existing and new entrants must rely on the incumbent local exchange carrier ("ILEC") to provide interconnection with its own customers as well as with other wireline and wireless carriers in the market. The ILECs, including Verizon, are subject to interconnection obligations under Section 251 of the Telecommunications Act. Verizon has been providing service under tariff or agreement to its competitors for many years in accordance with these interconnection obligations. It is vital that Board conditions be put in place to prevent FairPoint from seeking suspensions or modifications of Verizon's existing Section 251 obligations. These conditions are needed to ensure that the FairPoint acquisition does not lead to deterioration in the price and quality of interconnection services provided to the CLECs.

Q. What are the major components of interconnection that FairPoint must provide to keep the CLECs whole relative to the pre-acquisition period?

A. The major components of interconnection that FairPoint must provide post-acquisition are: (1) cost-based pricing for interconnection facilities and impaired unbundled network elements; (2) tandem transit at cost-based rates; (3) adequate trunking capacity; and (4) mid-span fiber meets.

Q. What guarantees is FairPoint willing to make with respect to cost-based interconnection?

A. According to Mr. Lippold at page 22 of his rebuttal testimony, FairPoint is willing to extend inter-carrier agreements in effect at closing in writing only for one year following their stated expiration date. In the case of expired interconnection agreements that now operate on a month to month basis, but which contain provisions for termination and negotiation of a successor agreement, FairPoint has proposed to extend such agreements for 12 months after the date of closing. At page 23 of his rebuttal, Mr. Lippold states that this commitment and others regarding special access "constitute a tremendous benefit to interconnecting carriers as a result of the transaction."

Q. Is FairPoint's commitment adequate?

A. This is not how NECTA and Comcast see it. Since Comcast's interconnection agreement with Verizon has already expired and remains in effect on a month-to-month basis, FairPoint's one-year commitment provides very little reassurance or certainty to Comcast as far as its future interconnection costs are concerned. Taken at face value, FairPoint's proposal could, shortly following completion of the FairPoint acquisition, force Comcast to enter into negotiations in order to have enough lead time to secure acceptable interconnection terms at the end of the one year extension period. At that not too distant point in the future, FairPoint may seek to raise existing interconnection rates. This would be especially appealing to FairPoint because it would raise the costs of its competitors during the three year alternative regulation plan that freezes retail rates, and remove the pressure on FairPoint to cut retail prices in response to competition.

Moreover, FairPoint's proposed one year extension will expire a mere six months after cutover to the new Operational Support Systems ("OSS") systems, assuming that cutover occurs as planned in May 2008. Further, there will still remain system work to be performed by Capgemini as part of a final release following the cutover.[2] Therefore, during this critical year, when so many issues are being worked on and while the companies are in the process of developing working relationships, it would be inadvisable to layer interconnection agreement negotiations on top of unresolved cutover matters.

[2] Exhibit NECTA/CPVT-MDP-2R (FairPoint Response to NECTA/CPVT 3-36).

Q. Does FairPoint express an opinion on whether wholesale rates are subject to the Verizon Alternative Regulation rate freeze?

A. Yes. In rebuttal, FairPoint's position is that "existing tariffed rates at the time of the closing should be subject to the exact same pricing rules as would apply were Verizon to continue as it exists today."[3] Further, FairPoint explains that the rate freeze would apply only to tariffed switched and special access rates.

Q. Are there other causes of the uncertainty that interconnection rates and terms will deteriorate under FairPoint?

A. Yes. In the rebuttal testimony of Mr. Skrivan, FairPoint has compounded the uncertainty caused by its refusal to extend interconnection agreements for a 3 year period by reserving for itself the right to seek suspensions or modifications of Section 251 obligations pursuant to Section 251(f)(2) of the Telecommunications Act.[4] This position is contrary to FairPoint's previous statements regarding its obligations pursuant to 251(c), made by Mr. Nixon at page 28 of his direct testimony. It also is contrary to my recommendations in my direct testimony. I understand that Verizon does not have the right to seek these suspensions or modifications, so an assertion by FairPoint of a right to seek a Section 251(f)(2)

[3] Exhibit NECTA/CPVT-MDP-3R (FairPoint Response to NECTA/CPVT 3-38)
[4] Skrivan Rebuttal at 26, 27. Exhibit NECTA/CPVT-4R (FairPoint Response to NECTA/CPVT 3-37)

suspension or modification of interconnection obligations that Verizon would be required to maintain creates a potential barrier to competition in Vermont markets.

Further, even the possibility that FairPoint could petition the Board for a suspension or modification of its interconnection obligations as an ILEC leaves competitors worse off than they would be if no transaction were to occur and provides FairPoint leverage in future interconnection negotiations. In order to avoid this significant erosion of competitors' existing interconnection rights, the Board must adopt a merger condition that precludes FairPoint from seeking suspension or modification of its Section 251 obligations pursuant to Section 251(f)(2) of the Telecommunications Act at this time or any time in the future.

Q. What position has FairPoint taken with regard to tandem transit service?

A. In response to my direct testimony at 37-40, Mr. Lippold first argues at pages 29-30 of his rebuttal that transiting is becoming increasingly competitive in the United States, so "it clearly is not a service in which the ILECs possess any unique bottleneck." He further claims that competitors can always connect directly with one another, so they are not dependent upon a transit provider. Notwithstanding this demurral at 29-30, he states that FairPoint will continue to provide tandem transit service to the extent it is required under the SGAT or interconnection agreements. Therefore, he sees no need for a condition requiring FairPoint to provide tandem transit service.

Q. Is Mr. Lippold's assurance satisfactory?

A. No. To begin with, I disagree strongly with his conclusory statement that the ILECs do not possess a bottleneck and therefore cannot impose excessive costs on the CLECs. Mr. Lippold provides no evidence of competing tandem transit providers in the State of Vermont that could replicate Verizon's facilities. The ILECs are the only ubiquitous providers of tandem transit service and they are the only carriers that can compel interconnection with their networks. His assurance that competitors can always connect directly completely ignores the following reality because (1) it is my understanding that competitors cannot be compelled to directly interconnect with one another and are under no obligation to do so under federal law; and (2) when competitors exchange de minimis amounts of traffic it is inefficient, and thus very costly, to implement direct connections. Finally, his statement that FairPoint will continue to provide tandem transit service says nothing about what would happen to the rates charged after the one-year interconnection agreement extension. Nor does Mr. Lipphold commit FairPoint to providing tandem transit service after existing interconnection agreements expire. Absent the provision of tandem transit service by the ILEC, Comcast customers and customers of other carriers that rely upon ILEC tandem transit service would be unable to reach every other customer of every competitor.

Q. What position has FairPoint taken on mid-span fiber meets?

A. Mr. Lippold has not been clear regarding FairPoint's intentions in Vermont. In rebuttal at page 31 and in response to a related rebuttal data request, he simply stated that FairPoint will do what Verizon is doing.[5] Verizon is providing mid span meets under its New Hampshire interconnection arrangements with Comcast. As I explain below, Comcast is concerned that the protracted process for obtaining mid span meet terms in New Hampshire not be replicated in Vermont. I therefore reaffirm my recommendation that FairPoint be required, as a condition for any approval of its merger application, to make available mid-span fiber meets in Vermont, just as it now does in New Hampshire.

Q. What is Comcast's specific concern regarding FairPoint's position?

A. Verizon has claimed that mid-span fiber meet point architecture requires the parties to reach prior written agreement on the details of the arrangement, including sizing, provisioning, distance limitations, compensation, timing and other specific parameters. Verizon dragged out the negotiations for the written agreements for months, causing delays in deployment. In New Hampshire, it took nearly 12 months to obtain an interconnection agreement amendment covering mid-span meets. Comcast is concerned that FairPoint will use the same tactics and that it may have unique interpretations for the agreement parameters, particularly with respect to compensation, distance limitations and timing of deployments. Comcast is further concerned that FairPoint does not have any experience in negotiating terms for fiber

[5] Exhibit NECTA/CPVT-MDP-5R (FairPoint Response to NECTA/CPVT 3-39).

meets with competitors, and that FairPoint may attach arbitrary limitations on Comcast's right to request fiber meets, further impeding Comcast's ability to compete as it expands its services in Vermont. Given FairPoint's general commitment to provide the same or better level of service than Verizon has been providing, the Board should direct FairPoint to make available in Vermont the same type of mid span meet arrangements that Verizon currently provides in New Hampshire. I have attached the mid span meet interconnection amendment language that is operative in New Hampshire and that FairPoint should be directed to make available in Vermont.[6]

Q. Do you have any concerns about FairPoint's position on trunk port capacity?

A. Yes. In my direct testimony, I recommended that FairPoint be required to notify competitors when trunk port capacity utilization reaches 70% at a wire center for T1 port capacity. Mr. Harrington states at page 10 of his rebuttal testimony that this merger condition is unnecessary and that so long as competitors provide FairPoint with independent and timely projections and forecasts, "FairPoint's obligation is to ensure that appropriate trunking capacity is present." I disagree with Mr. Harrington's position. Comcast does indeed provide forecasts to the ILECs. The purpose of this request, however, is to ensure that during this busy and demanding period, during and post system conversion, that FairPoint does not lose sight of the fact that switch capacity is a critical business issue for competitors. Insufficient

[6] Exhibit NECTA/CPVT-MDP-6R

trunk port capacity will have a disastrous effect on competitors' ability to provide quality service to Vermont customers.

Q. You also recommended that FairPoint increase the threshold definition of projects for trunk ordering purposes from 10 DS-1s to 28 DS-1s. How did FairPoint respond to this recommendation?

A. FairPoint is unwilling to commit to an increase in the threshold. Mr. Lippold states at page 30 of his rebuttal testimony that "such a change would impact system capacity and is not appropriate at this time." This is not an adequate explanation, and it is not clear to what "system" Mr. Lippold is referring. In fact, I understand that Comcast routinely provides forecasts to the ILECs and pays for trunking on acceptance, after testing. FairPoint has made no showing as to existing switch capacity and utilization to indicate whether an increase in trunking orders in the ordinary course would impact system capacity. Moreover, if FairPoint provided the trunk port capacity utilization information as I have recommended, an interconnecting carrier seeking to place a trunking order would have a better idea whether some augmentation activity might be needed in the switches or whether the trunking order could be processed without impacting system capacity. In prior testimony, FairPoint has expressed its objective to "provide service that is comparable to or better than that currently provided" by Verizon. [7] This is one of

[7] Prefiled Direct Testimony of Peter G. Nixon at 23.

the few areas where NECTA/CPVT is seeking performance that is better than currently provided by Verizon, and yet fully in line with the realities of today's market. It is unfortunate that the best that FairPoint can offer is to consider making changes such as this once the transition period has passed and it "has had an opportunity to operate the system and to develop relationships with its wholesale customers."[8] This approach will slow down or directly impede the ability of competitors to meet the demand for their services.

Q. What do you conclude concerning merger conditions needed in regard to FairPoint's interconnection obligations?

A. FairPoint has failed to demonstrate its willingness to meet Verizon's existing interconnection obligations or to equal or do better than Verizon's existing practices, as it has claimed. The Board must impose merger conditions in order to safeguard against the potential deleterious impact of the proposed transaction on the interconnection services that competitors have come to rely on.

[8] Lippold Rebuttal at 30.

III. <u>THE CUTOVER FROM VERIZON TO FAIRPOINT SYSTEMS CREATES GREAT RISKS FOR CONSUMERS AND COMPETITORS AND REQUIRES MERGER CONDITION SAFEGUARDS, INCLUDING INDEPENDENT THIRD PARTY TESTING AND INCREASED CUTOVER PROCESS OVERSIGHT</u>

Q. Please summarize your concerns about the potential impact of FairPoint's proposed cutover planning and cutover on wholesale and retail customers in Vermont?

A. As I explained in my direct testimony, the cutover from Verizon to FairPoint requires the creation and integration of new or changed systems to provide telephone services to retail and wholesale customers in Vermont. Considering the scope and scale of the cutover and the tight time schedule proposed by FairPoint, this is a daunting task that creates many risks for consumers and the State. But for the proposed transaction, no such risk would exist.

Q. In addressing concerns and recommendations from other parties about the cutover planning and cutover process, has FairPoint provided any new information to demonstrate that its proposed course of action will not significantly and adversely affect retail and wholesale customers at the time of the cutover and after cutover?

A. No. FairPoint's rebuttal testimony tries, but fails to defend the reasonableness of its cutover planning, cutover and post-cutover plans, in face of the risks associated with its proposed flash cut switch to new OSS systems. For example, Mr. Haga and Mr. Kurtze provide information and updates with regard to operations and business support systems that FairPoint plans to utilize.[9] They also provide some additional detail regarding the cutover process and the work plan for Capgemini. FairPoint also provides information in response to NECTA/CPVT data requests. Finally, FairPoint and Verizon have filed the Verizon Cutover Plan and the FairPoint Cutover Plan Task Lists. This additional information does not alleviate the concerns raised in my direct testimony and in the direct testimony of other parties in regard to the risks facing Vermont consumers and competitors as a result of the cutover process planned by FairPoint and Verizon. If anything, my concerns have increased as a result of FairPoint's and Verizon's rebuttal testimony and the new information that they have provided. As a result, I am convinced that the Board must require

[9] Prefiled Joint Rebuttal Testimony of Michael Haga and Arthur Kurtze on behalf of FairPoint Communications Inc., June 27, 2007 (hereafter "Haga-Kurtze Rebuttal").

independent third party testing of the readiness of FairPoint's new systems for cutover and that the decision whether FairPoint is ready to cut over cannot be left to FairPoint alone. As I explain below, the most prudent course for the Board to take in order to avoid adverse cutover and post-cutover impacts is to condition the merger upon the retention, at FairPoint's expense, of an independent third party to test and confirm the readiness of FairPoint's new systems for cutover. Based on additional information provided by FairPoint, it also is necessary for the Board to impose conditions relating to preparations for cutover and the post cutover period.

Q. Please explain what you have learned about Capgemini's engagement with FairPoint?

A. Mr. Kurtze explains that Capgemini will be developing "an entire suite of systems and operating infrastructure so FairPoint can successfully assume control of (and operate) Verizon's Northern New England wireline-based businesses."[10] This engagement requires the design and launching of systems architecture and migration of data from Verizon to FairPoint. Finally, Capgemini will work with FairPoint to design processes and operating methods to use the new systems.

Q. Have you reviewed the Verizon Cutover Plan and the FairPoint Cutover Plan Task Lists made available in late June 2007, and how do they affect your opinion regarding the risks associated with FairPoint's proposed cutover?

[10] Haga-Kurtze Rebuttal at 4

A. Yes. The Verizon Cutover Plan deals with the handing off of Verizon data to FairPoint. It provides no backstop in the event that such data cannot be properly handled by FairPoint's new systems after cutover or if FairPoint's new systems do not work. The handoff of data by Verizon to FairPoint raises concerns. **[BEGIN PROPRIETARY]** [redacted] **[END PROPRIETARY]**.[11] Verizon's handoff of data to FairPoint, even if successful, does not assure that orders placed with FairPoint will flow through to provisioning, even if the orders are accepted through Wisor, FairPoint's new wholesale CLEC gateway. FairPoint admits that this is the case.[12]

Q. What about FairPoint's Task List?

A. FairPoint's Cutover Preparation Tasks also raise concerns. First, the FairPoint document is only a list of cutover tasks; it is not a full-blown cutover plan that can be reviewed by the Board. The document, however, does provide some evidence of the complexity of the cutover process and therefore the high degree of risk that things can go wrong during cutover planning, the cutover itself and the post cutover period. With regard to the Cutover Preparation Tasks themselves, FairPoint has provided no detail of the work effort associated with specific tasks, so there is no

[11] Verizon Cutover Plan at page 4 of 278.
[12] Exhibit NECTA/CPVT-MDP-7R (FairPoint Response to NECTA/CPVT 3-5)

way to evaluate the reasonableness of the duration allowed to perform specific tasks.

Q. Why is this new information about FairPoint's plans insufficient to satisfy your concerns?

A. For the most part, this additional information confirms what I posited in my direct testimony, which is that the planned cutover impacts an enormously complex set of operational software and systems, and thus exposes customers to significant risk of system failure or sub-standard performance. As described in Verizon witness Smith's rebuttal testimony, there are **[BEGIN PROPRIETARY]** [redacted] **[END PROPRIETARY]**. This complex set of activity reflects only Verizon's part in the transaction and does not address the even more daunting tasks faced by FairPoint – the creation and integration of end-to-end OSS systems – without any degradation in service to retail and wholesale customers. This undertaking creates great risk to consumers and competitors, who depend on Verizon/FairPoint for essential facilities and services. A recent FairPoint SEC filing has acknowledged the material risks associated with its still evolving and incomplete cutover plans,[13] Mr. Haga and Mr. Kurtze admit to the existence of numerous material risks

[13] Exhibit NECTA/CPVT-MDP-8R (FairPoint SEC S-4 filing (June 29, 2007) at 25)

associated with the implementation of new systems to replace those used by Verizon today.[14]

Q. Has FairPoint provided enough detail regarding its cutover process to ensure adequate testing criteria, adequate testing processes, acceptance criteria, training and cutover preparation?

A. No. It has discussed its general plans, but has not laid out for the Board or interested parties concrete details. It also has taken the position that it will provide certain information only to the Department of Public Service. FairPoint has stated unequivocally that pursuant to its TSA with Verizon, it is only FairPoint that will decide when it is ready for cutover, regardless of whether the competitive carriers have shown otherwise.[15] At this late stage in this proceeding, FairPoint has not completed a number of critical actions: (1) completed selection of all new systems and provided system specifications; (2) developed testing plans for review; (3) established system testing criteria for review; (4) established internal training plans for review; (5) developed a detailed checklist and timeline covering necessary interactions with interconnecting parties, including the provision and exchange of information, training, testing of compatibility of systems (not just the use of the WISOR gateway, but the actual flow through of ordering and provisioning requests, billing and other back office functions); (6) established cutover acceptance criteria

[14] Exhibit NECTA/CPVT-MDP-9R (FairPoint Response to NECTA/CPVT 3-47)
[15] Exhibit NECTA/CPVT-MDP-10R (FairPoint Response to SOV/SEG 3-4)

for review; (7) determined the actual length of the so-called dark period or transition period when Verizon ceases taking orders, data is transferred from Verizon to FairPoint and FairPoint systems are ready to operate; (8) developed escalation plans to address dark period and cutover problems; (9) developed contingency plans for review; (10) disclosed in full detail the "final release" activities of Capgemini that are not due to occur until after the flash cutover and the effects of performing these activities after the flash cutover; and (12) agreed to provide remedies to competitors if the cutover process experiences significant problems.

Q. Has FairPoint addressed the Hawaiian Telcom situation and distinguished the present transaction from that situation?

A. It has tried to do so, but in my opinion it has just further established the parallels between the proposed transaction and the Hawaiian Telcom transaction. Notwithstanding Mr. Kurtze's attempt to differentiate the New England and Hawaii situations, the parallels are unmistakable. As Mr. Kurtze admits at page 35 of his rebuttal, "Capgemini needs to develop and implement approximately the same number of systems as required for the Hawaiian Telcom transaction." Although I do not doubt that FairPoint is seeking to avoid a debacle along the lines of the Hawaiian experience, there is too much at stake for competitors, the Department of Public Service and the Board to take a passive role during any transition from Verizon's existing systems to FairPoint's new systems.

Q. Does FairPoint acknowledge the risks associated with its cutover process now in the planning stages?

A. Mr. Kurtze has acknowledged some of these risks.[16] There are a number of reasons why this is such a high risk proposition. First, the replacement of so many key operational systems at one time is a very ambitious undertaking. Second, the transfer and integration of all of Verizon's data into the new systems being created at FairPoint is itself a complex and delicate process. Third, the aggressive timeframe for accomplishing all of these tasks creates enormous pressure on all of the parties involved, including the Board, FairPoint, Capgemini, Verizon, and the competitive providers. Fourth, the Cutover Task List is not finalized, but will be "updated from time to time as developments occur with respect to system architecture, design development and implementation, as well as with respect to business-transition activities."[17] The lack of experience of both FairPoint and Capgemini also adds to the layers of risk. My assessment is consistent with FairPoint's own disclosures in its SEC filing mentioned above.

Q. Are there ways that this risk could be mitigated?

A. I suggested in my direct testimony, that FairPoint might reduce the risk of disruption or failure of major systems by introducing system changes on a staged

[16] Exhibit NECTA/CPVT-MDP-11R (FairPoint Response to NECTA/CPVT 3-48)
[17] Exhibit NECTA/CPVT-MDP-12R (FairPoint Response to NECTA/CPVT 3-45)

basis. The cutover could be staged on a system-by-system basis or on a state-by-state basis in the three states affected by this sale. This has the potential for limiting the risk to customers and would also facilitate using the lessons learned from the first conversion on the remaining conversions.[18] I suggested in my direct testimony that another way to mitigate risk would be for FairPoint to retain the ability to go back to the Verizon systems in the event of a large-scale failure experienced in the conversion to the new systems.

Q. Has FairPoint indicated a willingness to adopt any of these proposals to mitigate the risks associated with conversion or demonstrated that its flash cut approach involves less risk to the public and competitive markets?

A. No. FairPoint states at page 29 of the Haga/Kurtze rebuttal that "the flash cut was selected because it presents the least risk for issues to arise. We considered and rejected a staging of various applications." Elaborating on this decision, Mr. Haga states at page 29 that following extended discussions with Verizon the alternatives to a flash cutover were rejected because each effort to reduce cutover levels actually raised other issues which created risk."

FairPoint also states that "it is also not practical to operate the Verizon systems in some sort of parallel or 'primary backup' mode. The best course of action is to rigorously test and exercise the new systems and then cutover when fully ready."

[18] See, Direct Testimony of W. Curtis Mills, Jr. on Behalf of the Department of Public Service.

For this reason, FairPoint states at page 32 of the Haga/Kurtze rebuttal that it is planning an extensive testing and acceptance program.

Q. Do you have concerns about FairPoint's plans for testing its new systems and processes?

A. Yes. I have several concerns. FairPoint has acknowledged in rebuttal that testing is critical, but it has not even finished developing its testing strategy, plans and readiness criteria, much less performed and provided the results of any testing.[19] Therefore, it is impossible for the Board and parties to review this important part of FairPoint's petition as part of the process of approving the acquisition, given the expedited schedule. Moreover, the FairPoint Task List is a high level document that contains no descriptive text regarding the steps associated with each task. It is not possible to determine what will be done by FairPoint, whether the time allowed for completion of individual tasks is reasonable and whether the four-month time between the projected date of close and the projected cutover date is adequate for testing, debugging and verification of readiness for cutover.

Fairpoint has stated it has committed to review its extensive testing and acceptance program with the Board and Department of Public Service,[20] but will not review it with CLECs. Moreover, FairPoint intends to provide only a summary of the test

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[19] Exhibit FairPoint Response to NECTA/CPVT-MDP-13R (FairPoint Response to NECTA/CPVT 3-46)

[20] Haga-Kurtze Rebuttal, at 32; Exhibits NECTA/CPVT-MDP-14R and NECTA/CPVT-MDP-15R (FairPoint Responses to NECTA/CPVT 3-51, 3-52)

scenarios for local service preordering and order, access service preordering and ordering, and trouble ticketing.[21] And to the extent wholesale customers "legitimately" find the test data to be inadequate, FairPoint "will attempt to meet with the wholesale customers to clearly understand their concerns, and, if the proposed remedy is reasonable, FairPoint will strive to accommodate and alleviate those concerns."[22] Simply put, FairPoint will be the judge and jury of these claims against itself.

Q. Has FairPoint explained how the burdens of cutover and implementation would be coordinated in three states?

A. No. FairPoint has not explained how three state commissions would handle the enormous burden of coordinating and overseeing a three-state cutover planning and implementation process. No uniform process for the establishment of cutover readiness criteria, review of test results or the consequences of individual reviews by three states has been provided or explained. It is therefore necessary and appropriate for an independent third party to handle the certification of readiness of FairPoint's new systems for cutover. This safeguard would reduce burdens on the commissions and their staffs. It also would provide the public as well as wholesale competitors with assurance that a neutral expert had reviewed the readiness of FairPoint's systems prior to a three-state flash cutover. The Board should learn

[21] Exhibit NECTA/CPVT-MDP-16R (FairPoint Response to NECTA/CPVT 3-15)
[22] Exhibit NECTA/CPVT-MDP-17R (FairPoint Response to NECTA/CPVT 3-31)

from Hawaii that, notwithstanding assurances provided through conditions and stipulations and promises by the new company that any problems detected during testing would be addressed before cutover, massive system failures occurred anyway. There was no independent third party to verify the readiness of that new company's systems prior to cutover. Collaborative participation by wholesale providers and a TSA with Verizon did not prevent a disastrous cutover. Simply put, the Board cannot leave cutover preparation, readiness for cutover and post cutover contingency planning to FairPoint alone.

Q. Are any contingency plans in place?

A. No. FairPoint has not yet developed any contingency plans in the likely event that its systems do not function properly.[23] The absence of reviewable contingency plans exposes consumers as well as competitors to more economic and service-affecting risks. FairPoint should be required to file for Board review and approval contingency plans with the Board, that account for the size and scope of competitors' needs-and the resources to be devoted to them- in the event of critical system failures or the disruption of automated processes.

Q. Has FairPoint agreed to compensate competitors who are damaged as a result of the cutover?

[23] Exhibit NECTA/CPVT-MDP-18R (FairPoint Response to NECTA/CPVT 3-49)

A. No. Contrary to the recommendations of several parties, FairPoint has stated it will not compensate CLECs for costs incurred to prepare for cutover or costs and lost revenue associated with the cutover in the event of wholesale service-affecting failures.[24] It is telling that FairPoint is requesting that the PAP metrics be waived for a total of a 120 day "grace period", thirty days prior to, and 90 days after cutover of the new systems.[25] FairPoint would strip competitors of even limited existing remedies available under the PAP. Absent a condition that shifts this risk to FairPoint, the proposed transaction creates significant risks of economic harm to wholesale customers and the retail customers that they serve.

Q. What does this situation lead you to conclude regarding FairPoint's proposed cutover process and the need for safeguards?

A. I have concluded that reliance upon FairPoint's proposed cutover process would place the public and competitors in a very risky position given its unwillingness to use a staged cutover or to maintain Verizon's systems as a backstop. Based upon FairPoint's rebuttal testimony and its related data requests, I believe that additional safeguards are required in order to protect the public from significant harm and avoid anti-competitive impacts. I therefore am recommending that the Board require independent third party testing of FairPoint's proposed systems and

[24] Exhibit NECTA/CPVT-MDP-19R (FairPoint Response to NECTA/CPVT 3-42)
[25] Exhibit NECTA/CPVT-MDP-10R (FairPoint Response to SOV/SEG 3-4)

increased oversight of the cutover planning, cutover and post cutover periods. I have reflected this recommendation in a revised set of merger conditions attached to my rebuttal testimony.

Q. Has third-party testing been used before in the industry?

A. Yes. Third-party testing was used extensively and effectively by state commissions in the course of reviewing RBOC applications for long distance authority under Section 271 of the Communications Act. Third-party testing was essential to the approval process in many cases. The FCC noted in its New York assessment of 271 that among the benefits of the third-party testing was the identification of "numerous shortcomings in Bell Atlantic's OSS performance that were subsequently corrected and re-tested."[26] The FCC further stated that "without nondiscriminatory access to the BOC's (Bell Operating Company's) OSS, a competing carrier 'will be severely disadvantaged, if not precluded altogether, from fairly competing' in the local exchange market."[27]

Q. How was third-party testing conducted in the Section 271 case in New York?

A. The New York Commission retained KPMG to conduct a test of the readiness of Bell Atlantic's OSS, interfaces, documentation and processes. KPMG assumed the

[26] Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, (December 22, 1999) (Bell Atlantic New York 271 Order), appeal pending sub nom. AT&T Corp. v. FCC (D.C. Cir. filed Dec. 27, 1999) (No. 99-1538), at ¶10

[27] Id., at ¶83

role of a "pseudo-competing carrier" operations department. As explained in the FCC Order: "By building and submitting transactions using Bell Atlantic's electronic interfaces with test accounts in central offices spread across New York, KPMG was able to live the experience of a competing carrier."[28] To fully test these systems, orders were submitted with known error conditions, canceled, and supplemented. KPMG also "stressed" the system with volume tests designed to identify bottlenecks for wholesale customers.

Q. Has third-party testing been relied upon in Vermont?

A. Yes. Independent third-party testing and verification of new systems was relied upon in Vermont as part of the Section 271 approval process. In recommending approval in its comments to the FCC, the Board considered that Verizon's multi-state OSS systems had already been certified through independent third party testing conducted by KPMG in Massachusetts, and attested to independently by Price Waterhouse Coopers. In relying upon the third party testing conducted in Massachusetts, the Board and the FCC took steps to make sure that the wholesale OSS systems implemented by Verizon for use in Vermont had been fully tested by an independent third party and were fully functional. The public good will not be served if the new systems implemented by FairPoint do not operate as efficiently and effectively as those that were previously tested and put into operation by Verizon under the 271 process.

[28] Id., at ¶96

Q. Why is third-party testing so critical for this proposed transaction?

A. In light of FairPoint's own emphasis on testing as the "primary mitigation technique," it is critical that a neutral third party participate in testing or audit the tests conducted by FairPoint. This would help ensure not only that the systems function as planned, but also that competitors do not bear a disproportionate burden in the testing process. This has several benefits, especially by providing an unbiased source of information on the capabilities of the OSS systems. In situations where conflict might arise between FairPoint and the competitors, it will be extremely valuable to the Board to obtain unbiased information on reasons for failures or deficiencies in the ability of the carriers' systems to interface properly. The presence of an independent third-party tester will reduce the enormous burden that would otherwise be put on the Board by providing an unbiased expert resource in order to resolve the inevitable disputes among parties over issues that are highly complex and unprecedented in terms of the scope and the expected time pressure to obtain a resolution.

For these reasons, I have recommended as a merger approval condition the requirement that an independent third party be retained at FairPoint's expense to test and audit the readiness of FairPoint's systems for cutover. It is also critical that the Board retain oversight of the testing process and, with input from the independent third party, approve whether FairPoint's OSS systems are ready for cutover. Testing of wholesale systems should involve FairPoint, Verizon, competitors, a third-party tester, and Board or Department staff members. The OSS systems must be able to demonstrate the ability to operate at adequate flow levels and handle the typical range of problems encountered in a commercial setting.

Q. What position has FairPoint taken in regard to third-party independent testing and verification?

A. FairPoint is opposed to third-party independent testing and verification.[29] It claims that "injecting a third party into the testing and verification process would lead only to an extensive, additional layer of costs and undue delay in the testing and cutover process."[30] FairPoint also attacks third-party independent testing and verification as micromanagement.[31]

Q. What is your response to FairPoint's opposition to third-party independent testing and verification?

A. FairPoint's claims are without merit. It has not quantified the delay that it believes would be caused by third party testing and has given the Board no reason to reject third party testing due to delay. It has not compared this unspecified delay to the timeline that would be involved if the Board or Department Staff were brought into the cutover process to review testing plans, acceptance criteria and testing results on

[29] Exhibit NECTA/CPVT-MDP-20R (FairPoint Response to NECTA/CPVT 3-57); Haga/Kurtze Rebuttal at 36
[30] Exhibit NECTA/CPVT-MDP-20R (FairPoint Response to NECTA/CPVT 3-57)
[31] Id.

a pre-cutover basis. FairPoint also has failed to quantify the costs associated with third party testing when shared on a three state basis and has ignored the likelihood that the new systems will be used for its operations in other states, further spreading out the costs involved. FairPoint also has failed to balance the costs that it would incur to fund Board or Department Staff consultant involvement with the cutover planning and cutover process versus the cost of a common third party tester retained by the three affected states.

FairPoint also ignores the need for the Board to balance factors of cost and delay associated with cutover planning and cutover versus the quality of service and costs impacts on the State if the cutover process fails, as it did in Hawaii. FairPoint is well aware of the substantial risks and consequences of an unsuccessful cutover-it has disclosed these risks in its SEC filings and acknowledged them in rebuttal discovery. The Board's obligations to the public involve a different balancing of factors than FairPoint's obligations to shareholders.

Q. What reasons would FairPoint have to oppose third party testing if its cutover process presents such a great risk?

A. FairPoint, whose obligation is to its shareholders, will take risks that certain actions might cause its systems to fail, or perform poorly, if it can save enough money to offset the expected cost of this failure. For example, if a delay in the cutover imposes on FairPoint an additional $1 million a month in out-of-pocket costs, but only decreases the probability of system failure by 5%, then FairPoint will oppose the delay so long as the costs that it bears from a system failure are less than $20 million.[32] But if the cost to society as a whole is much greater than the direct cost to FairPoint, then this decision may not be in the best interests of the public. For example, if system failure imposes a $100 million cost on society as a whole, and the cost of the delay is $1 million, then it would be in the public interest to delay the cutover, so long as it reduces the risk of failure by at least 1%. Similarly, FairPoint would prefer to avoid independent third party testing and verification expenses and shift the costs and risks of cutover failures to consumers and competitors. FairPoint undoubtedly wants to avoid paying Verizon TSA payments, given the way that the TSA is structured. As FairPoint ramps up its own organization and becomes capable of assuming some TSA functions on its own, the TSA prevents it from reducing significant TSA payments until the flash cut. Therefore, FairPoint has an incentive to perform a flash cutover, even if it is aware that post cutover problems are likely to occur, and hope that post cutover fixes will cure these problems.

A tradeoff of this nature may explain the different parties' positions on third-party independent testing and verification. System failure or poor performance will impose much larger costs on society as a whole than on FairPoint. Consumers, businesses, and competitors would all be harmed, for example, if the LNP process did not work properly. FairPoint would not be harmed much – if at all. Therefore,

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[32] In this hypothetical exercise, the expected value of FairPoint's costs of a system failure is $200 million times the probability of the failure. Therefore the expected cost of a 5% increase in the likelihood of failure is .05 x $200 million, which equals $10 million.

it is in the interests of the public to look beyond the private tradeoff of FairPoint on this issue and consider the broad policy context.

Q. How disruptive would a failure of the cutover process be to the operations of competitors such as Comcast?

A. Failure of FairPoint's wholesale systems during the cutover process would be disastrous to competitors and would also impact end-users of all competitors. In general, Comcast could experience disruptions to many facets of its customer service operations, including: 1) backlogs at its call centers; 2) delayed or lost orders for service; 3) delayed or lost repair orders; 4) problems with intercarrier billing; 5) inability to acquire customers through number portability; 6) delays in augmenting trunking capacity to support growth; 7) potential problems with traffic routing; 8) trouble analysis and fault isolation. FairPoint's rebuttal fails to weigh the effects of a premature and unsuccessful cutover upon competitors and their customers.

Q. Can you please explain some of these issues in a little more detail?

A. Yes. For example, if FairPoint, upon cutover, experiences difficulties with the gateway interface and integration of its proposed WISOR system, competitors such as Comcast will be unable to see automated flow-through of its local service requests (LSRs) used to initiate number porting as discussed above. Number porting is discussed at length in my direct testimony as critical to competitors of the

ILEC. A large percent of Comcast customers port their phone numbers when they leave the ILEC. If the port request does not flow through end-to-end, the port does not occur and the customer installation is cancelled. A large volume of cancelled orders affects call center hold times, customer appointment scheduling, and, most critically, the end-user customer experience. A prolonged failure of these systems would impact Comcast's ability to grow and attract customers and meet their demands for service.

As I understand it, the same system will process access service requests (ASRs), which Comcast uses to order trunking for initial deployment and growth. Should those processes fail, there may be delays in the capacity available to serve competitors like Comcast. Orders may fall out and be lost or delayed by manual work-arounds. For example, in Hawaii, the ASR process is still manual and has been outsourced by Hawaiian Telcom.[33]

Other basic issues could be that Comcast customers' telephone numbers and address information do not properly update in Directory Listings. All of these would impact customers severely and have a tremendous impact on Comcast's day-to-day operations.

It is important that the Board recognize that if the new systems to be used by

[33] Exhibit NECTA/CPVT-MDP-21R (Statement of Position of Time Warner Telecom. LP dba Oceanic Communications, Hawaii PUC Docket 2006- 0400, June 21, 2007 at 18)

FairPoint don't work as planned, then all ordering, provisioning and maintenance functions would be disrupted and would have to be handled using manual processes. There are clear and serious limitations on the size, scope, scale and length of time that manual processes can be substituted for a fully functioning automated OSS. It therefore is critical that an independent third party provide comprehensive and competitively neutral testing, subject to Board oversight.

Q. Are there issues related to cutover that are of concern but may not necessarily be directly related to the new systems?

A. Yes. As discussed by Mr. Smith in the recently filed Vermont testimony, there are activities that will not "flash cut," primarily network related activities which require a physical re-pointing of network elements "from" Verizon "to" FairPoint.[34] As I understand it, because FairPoint is acquiring the Verizon STPs (signal transferring points), there will be significant impacts to the SS7 Network, which affects LIDB, CNAM, 800 and various other databases. The switches in the SS7 network will need to be updated to ensure that the "traffic control" function played by these switches does not break down and degrade calls on the Comcast network.

In addition, all STPs, SS7 databases, end offices, and access tandems have unique identifiers called point codes. As I understand it, these will all need to be updated by FairPoint and also by the competitors in their respective networks. This will

[34] Smith Rebuttal Testimony at 9-10.

require resources by Comcast and other competitors that are not without cost, and if not done correctly and timely by FairPoint, it will impact traffic routing and signaling. As noted in Mr. Harrington's rebuttal testimony at 20, this requires a "fair amount of administrative work, coordination and pre-planning" both within the FairPoint network and with all competitors that use the current point codes.

There would also be serious billing and routing issues if the company codes associated to each and every switch are not appropriately updated to the new FairPoint codes. While this is not an unusual occurrence in the industry when a merger or acquisition occurs, it is not without risk should the codes not be timely and appropriately updated by FairPoint.

Q. Even under the best of circumstances, will Comcast experience disruptions to its own operations during the cutover process?

A. Yes. FairPoint expects that a transition period will occur once the parties begin the cutover process. It currently estimates the transition period to last for five business days.[35] My understanding, based on responses in the New Hampshire technical conference, is that during the transition period all of the automated, integrated systems will be completely unavailable. This will affect all systems, including the wholesale systems which interface with Comcast.[36] All orders taken during this

[35] Exhibit NECTA/CPVT-MDP-22R (FairPoint Response to NECTA/CPVT 3-63)
[36] Exhibit NECTA/CPVT-MDP-23R (New Hampshire Public Utilities Commission, Docket No. DT 07-011 FairPoint Response to NECTA/CPNH FDR III-24)

period will have to be manually processed and will require manual intervention to update systems once they are running again. During this period, FairPoint has stated it will only process orders of an emergency nature.[37] It is unclear what types of orders will be processed.

In my opinion, Comcast and other competitors would be ill-advised to submit orders to FairPoint for number portability, trunk orders and changes to directory listings during or close in time to the dark period. It would seem unlikely that FairPoint would designate these orders as a "priority," which is the criterion it is using to assign manual "work-arounds" to fulfill orders during this period, despite the fact that number porting requests are the very basis upon which Comcast can install a new customer.[38] Moreover, there would be an increased risk during this period that unfilled orders would be lost. As explained by FairPoint, pending orders that are within Verizon's systems at the time of the cutover will be "converted in their current state." How this is to be accomplished has yet to be determined.

As a consequence, the competitors will be forced to enter a dark period of their own, and suspend order-taking or delay significantly the delivery intervals promised to new customers. This will inevitably lead to a lower productivity of competitors'

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[37] Exhibit NECTA/CPVT-MDP-24R (New Hampshire Public Utilities Commission, Docket No. DT 07-011, FairPoint Response to CLEC FDR III-6)

[38] Id.

customer marketing and order fulfillment organizations, and most importantly, decreases in customer installations, which will increase the overall cost of doing business in the State of Vermont.

Competitors are likely also to face delays in the handling of repairs during and around the dark period. For example, if Comcast experiences trouble in interconnection trunks, such as blocked or misrouted calls, it may be unable to get these problems resolved in a reasonable period of time because FairPoint will not have access to its automated systems.[39] This will harm the reputation of the CLEC, because its customers will be unaware of the source of the problem (i.e., FairPoint).

IV. <u>WHOLESALE OPERATIONS MUST BE A PRIORITY FOR FAIRPOINT</u>

Q. What have you learned from the additional information that FairPoint has provided about its wholesale operations?

A. FairPoint has provided some details regarding its wholesale operations plans. These new details, made evident in Mr. Lippold's rebuttal testimony at page 2 and related data responses, create additional concerns about the proposed transaction. Comcast and NECTA are concerned particularly that the FairPoint organization to serve wholesale customers is also responsible for developing revenues from medium and large size retail business customers. In fact, it appears the contract management

[39] Id.

team, which is supposed to negotiate interconnection agreements, will be responsible for both interconnection agreement negotiation and business agreement negotiation.[40] This organizational structure appears to create a conflict of interest that will impact wholesale customers engaged in interconnection negotiations or ordering facilities from FairPoint. While FairPoint states that "strict business rules will be developed"[41] regarding the handling of competitive information, this cannot provide the same protection as the current situation whereby Verizon has entirely separate wholesale and retail organizations.

Q. How has FairPoint addressed concerns expressed about its organizational structure, which was first presented in its rebuttal testimony and questioned in discovery?

A. Both Mr. Lippold and Mr. Nixon have defended this potentially problematic organizational structure. However, the anti-competitive risks that it creates can be easily avoided by separating wholesale management from retail management, as Verizon has done. No sound reason exists for the Board to permit this type of organizational structure.

V. OTHER ISSUES OF CONCERN

[40] Exhibit NECTA/CPVT-MDP-25R (FairPoint Response to NECTA/CPVT 3-20)
[41] Exhibit NECTA/CPVT-MDP-26R (FairPoint Response to NECTA/CPVT 3-2)

Q. Mr. Lippold states at page 29 of his rebuttal that your testimony on Comcast's attempt to negotiate with a FairPoint's ILEC in Washington, YCOM Networks, was premature. He states that the parties have 135 days to reach an agreement, which is a period of time that will not expire until late August. Why are you concerned with the failure to achieve a negotiated agreement?

A. As set forth in my direct testimony at 33-34, FairPoint was unresponsive to a formal request for interconnection negotiations for almost 60 days, and only substantively responded after the issue was raised in the New Hampshire technical sessions in June 2007. Mr. Lippold correctly states that the parties have 135 days to negotiate before the statutory arbitration window begins; however, any significant delay could result in unnecessary use of the Washington Commission's and Comcast's resources for arbitration. This lack of responsiveness would be extremely atypical when dealing with an RBOC, and does not instill confidence that FairPoint is willing or able to negotiate efficiently with a single competitor, let alone multiple competitors.

Q. Mr. Lippold responded at page 32 of his rebuttal testimony to your recommendation for a merger condition requiring FairPoint to offer pole attachments at the same rates, terms and conditions as Verizon. He states that FairPoint will provide the same pole attachment services and at the same rates as Verizon, but appears to be opposed to making this a condition. Are you satisfied with his statement?

A. No. A merger condition is appropriate because FairPoint has not clearly and unequivocally accepted that its tariffed services for pole attachments are subject to the incentive rate plan rate freeze that extends through December 31, 2010.

Q. At page 31 of his rebuttal testimony, Mr. Lippold opposes your recommendation to make adherence to local number portability (LNP) a merger condition. He claims this is unnecessary because "FairPoint is committed to providing these services in conformance with industry standards." Do you still recommend a merger condition concerning LNP?

A. Yes. Competitors are completely dependent upon LNP to offer service to porting customers. And while FairPoint might have the best intentions to fulfill its commitment to provide LNP in conformance with industry standards, it has much less at stake than its competitors. Since it is entirely possible that FairPoint will not be able to achieve all of its goals during the transition, it is entirely possible that LNP could be moved to the bottom FairPoint's priorities. To protect against this risk, I recommend that the merger be conditioned on implementation of standardized LNP systems and procedures. This condition is especially critical in light of FairPoint's recent data response indicating that it is considering the outsourcing of several critical LNP functions.[42]

Q. Does this conclude your testimony?

A. Yes.

[42] Exhibit NECTA/CPVT-MDP-27R (FairPoint Response to NECTA/CPVT 3-58)